

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



Office of Government Ethics

In Re: Marion Barry
Case No.: 1055-001

NEGOTIATED DISPOSITION

Pursuant to D.C. Official Code § 1-1162.21(a)(4)(E)¹ of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 et seq., the Office of Government Ethics ("OGE") hereby enters into this Negotiated Disposition Agreement with the Respondent, Marion Barry. Mr. Barry agrees that the resulting Negotiated Disposition Agreement is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Mr. Barry currently is a District of Columbia Councilmember and was a Councilmember for the period January 1, 2012, through December 31, 2012. As a Councilmember, Mr. Barry was required to file a Public Financial Disclosure Statement ("FDS") for calendar year 2012, on or before May 15, 2013. Mr. Barry filed his Public FDS on May 15, 2013. In response to Question 8, which states, "Please list all gifts you received from a prohibited source in an aggregate value of \$100 in a calendar year," Mr. Barry listed a \$2,800 gift from Forney Enterprises, Inc.,² and a \$4,000 gift from F & L Construction.

With respect to Forney Enterprises, Inc., Mr. Barry acknowledges that he was aware that Forney Enterprises, Inc. was or had been either a contractor or subcontractor with various District agencies. In fact, Forney Enterprises, Inc. performed work on a Department of General Services contract for Design-Build Services for Leckie Elementary School and two change orders totaling approximately \$1.8 million came before the D.C. Council for a vote in 2013. Forney Enterprises, Inc., therefore, is a prohibited source, which Mr. Barry acknowledged when he listed the \$2,800 gift from Forney Enterprises, Inc. in response to the question concerning gifts from prohibited sources.³

With respect to F & L Construction, Mr. Barry acknowledged that he knew that F & L Construction was or had been either a contractor or subcontractor with various District agencies. In fact, F & L Construction had an approximately \$3.4 million contract with the Department of Public Works beginning in July 2012. F & L Construction, therefore, is a prohibited source, which Mr. Barry acknowledged when

¹ D.C. Official Code § 1-1162.21(a)(4)(E) of the Ethics Act provides, in pertinent part, that "[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: . . . Any negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board."

² Mr. Barry subsequently clarified in a letter to the Director of Government Ethics dated June 13, 2013, that he received the gift from Keith Forney, owner of Forney Enterprises.

³ Prohibited Source is defined in the Ethics Act as "any person that: (A) Has or is seeking to obtain contractual or other business or financial relations with the District government; (b) Conducts operations or activities that are subject to regulation by the District government; or (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities." D.C. Official Code § 1-1161.01(46).

he listed the \$4,000 gift from F & L Construction in response to the question concerning gifts from prohibited sources.⁴

Mr. Barry stated in his June 13, 2013, letter to the Director of Government Ethics that there was no agreement or understanding that in exchange for his gifts from Forney Enterprises, Inc. and/or F & L Construction, that his vote, opinion, judgment, action, decision, or exercise of discretion in connection with his official duties as a Councilmember would be influenced in any way to benefit Forney Enterprises, Inc. or F & L Construction, respectively. Each company, however, had a matter before the D.C. Council in 2012. Mr. Barry, as a sitting Councilmember, normally would have participated in any discussion of those matters and voted on them. Because he accepted the gifts from these contractors, however, he was required to prepare a written statement describing the matter and the nature of the potential conflict of interest and submit that written statement to the Council Chairman.⁵ This would satisfy the requirement to disclose the matter and allow the Chairman to read the written statement into the record and excuse the Councilmember from votes, deliberations, and other actions on the matter, as required.⁶ Mr. Barry neither disclosed to the Council Chairman that he accepted these gifts, provided written statements about the nature of his conflicts of interest, nor recused himself from votes, deliberations, and other actions on the matters before the Council relating to these two companies.

II. NATURE OF MISCONDUCT

For each of the two gifts Mr. Barry received, Mr. Barry's conduct is in violation of:

■ The Council Code of Conduct, Section III (Gifts From Outside Sources) (a), which states, in pertinent part, that "employees shall not solicit or accept, either directly or indirectly, any gift from a prohibited source."

■ The Conflicts of Interest section of the Ethics Act, D.C. Official Code § 1-1162.23(c)(3), which states that "[d]uring a proceeding in which an elected official would be required to take action in any matter that is prohibited under subsection (a) of this section,⁷ the Chairman shall: (A) Read the statement provided in paragraph (1) of this subsection into the record of the proceedings; and (B) Excuse the elected official from votes, deliberations, and other actions on the matter."

Because Mr. Barry accepted gifts from Forney Enterprises, Inc. and F & L Construction, he accepted two gifts from prohibited sources, in violation of the Council Code of Conduct, Section III(a). Because Mr. Barry failed to disclose to the Council Chairman that he accepted these gifts, provide written statements about the nature of his conflicts of interest, and recuse himself from votes, deliberations, and other actions on the matters before the Council relating to these two companies, he violated D.C. Official Code § 1-1162.23(c)(3).

III. TERMS OF THE NEGOTIATED DISPOSITION

Mr. Barry acknowledges that his conduct was in violation of the District Code of Conduct and that he should be, and hereby is, "**Censured**" for his conduct and fined in the amount of \$13,600. The Ethics Board may assess a civil penalty for a violation of the Code of Conduct of not more than \$5,000 per

⁴ Mr. Barry subsequently clarified in a letter to the Director of Government Ethics dated June 13, 2013, that he received the gift from Freddie Winston, owner of F & L Construction.

⁵ D.C. Official Code § 1-1162.23(c)(1).

⁶ D.C. Official Code § 1-1162.23(c)(3).

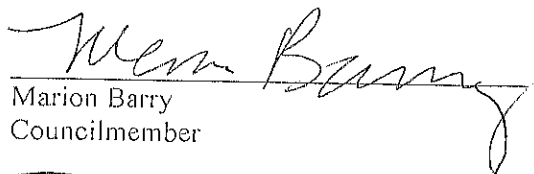
⁷ D.C. Official Code § 1-1162.23(a) states, in pertinent part, that "[n]o employee shall use his or her official position or title . . . in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests"

violation, or 3 times the amount of an unlawful gift. (D.C. Official Code § 1-1162.21(a)(1)). The fine of \$13,600 represents 2 times the total amount of the two unlawful gifts. Mr. Barry agrees to pay \$6,800 of the fine in a lump sum within 14 days of full execution of this Negotiated Disposition Agreement by bank check or money order made out to the D.C. Treasurer and provided to OGE. Mr. Barry agrees to pay the remaining \$6,800 in four equal quarterly installments of \$1,700.00 on the following dates: October 11, 2013; January 10, 2014; April 11, 2014; and July 11, 2014. Payments shall be made by bank check or money order made out to the D.C. Treasurer and provided to OGE. Mr. Barry agrees that in no event shall any of the money for the fine be obtained from a prohibited source.

Moreover, Mr. Barry, as part of this Negotiated Disposition Agreement, agrees to attend ethics training provided by OGE within six months of the full execution of this Negotiated Disposition Agreement. Mr. Barry also promises not to engage in such conduct in the future. In return for Mr. Barry's acknowledgement of this Censure, penalty of a \$13,600 fine, agreement to attend ethics training, and promise not to engage in such conduct in the future, OGE will not seek any further remedy or take any further action relating to the above misconduct.

Mr. Barry understands that if he fails to adhere to this agreement, OGE will recommend that the Ethics Board hold an open and adversarial hearing on this matter.⁸ Because OGE is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Mr. Barry agrees to waive any statute of limitation defenses should the Board decide to proceed in that manner as a result of Mr. Barry's breach of this agreement.

The mutual promises outlined herein constitute the entire agreement in this case. Failure to adhere to any provision of this agreement is a breach rendering the entire agreement void. By our signatures, we agree to the terms outlined herein.


Marion Barry
Councilmember

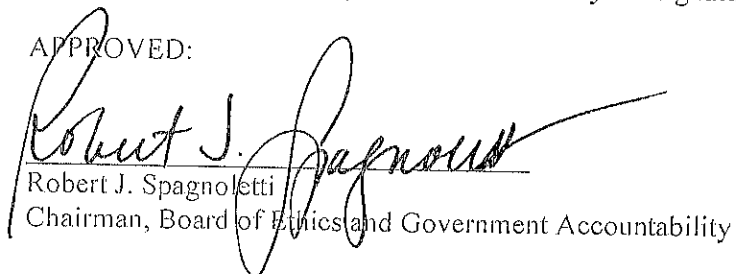
7-10-13
Date


Darin Sobin
Director of Government Ethics

7/11/13
Date

This agreement shall not be deemed effective unless and until it is approved by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairman below.

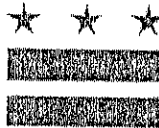
APPROVED:


Robert J. Spagnoletti
Chairman, Board of Ethics and Government Accountability

7/11/13
Date

⁸ D.C. Official Code § 1-1162.14(a)(1)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



Office of Government Ethics

IN RE: MARION BARRY,

Respondent

CASE No.: 1055-001

SUMMARY

The Office of Government Ethics entered into a Negotiated Disposition Agreement with Councilmember Marion Barry as a full settlement of this Office's investigation into Councilmember Barry's disclosure on his 2012 Public Financial Disclosure Statement that he accepted gifts from two prohibited sources.

Councilmember Barry disclosed in response to Question 8 on his 2012 Public Financial Disclosure Statement, which asks officials to list any gifts from prohibited sources, that he received a \$2,800 gift from Forney Enterprises, Inc., and a \$4,000 gift from F & L Construction. Councilmember Barry acknowledges that he knew that each of these contractors was or had been either a contractor or subcontractor with various District agencies.

In fact, Forney Enterprises, Inc. performed work on a Department of General Services contract for Design-Build Services for Leckie Elementary School and two change orders totaling approximately \$1.8 million which came before the Council for a vote in 2013. Forney Enterprises, Inc., therefore, is a prohibited source, which Mr. Barry acknowledged when he listed the \$2,800 gift from Forney Enterprises, Inc. in response to the question concerning gifts from prohibited sources. Similarly, F & L Construction had an approximately \$3.4 million contract with the Department of Public Works beginning in July 2012. F & L Construction,

therefore, is a prohibited source, which Mr. Barry acknowledged when he listed the \$4,000 gift from F & L Construction.

Councilmember Barry has stated that there was no agreement or understanding that in exchange for these gifts that his vote, opinion, judgment, action, decision, or exercise of discretion in connection with his official duties as a Councilmember would be influenced in any way to benefit either of these companies. We did not find evidence to the contrary. In the case of the Forney Enterprises change order, the May 1, 2013, memorandum from Mayor Vincent Gray to Council Chairman Phil Mendelson requesting that the change order be considered and approved by the Council states that the change order "settles all outstanding requests and closes out this project." I point this out because it would appear that all the Council was being asked to do was to approve a change order for work that already had been completed and for which the contractor probably was entitled to be paid.

Councilmember Barry, however, acknowledges that because he accepted gifts from these contractors, when matters relating to each of these contractors came before the Council in 2013, he was required to prepare a written statement describing the matter and the nature of the potential conflict of interest and submit that written statement to the Council Chairman to be read into the record. In addition, Councilmember Barry acknowledges that he was supposed to be excused from votes, deliberations, and other actions on the matter, but because he did not disclose to the Council Chairman that he accepted these gifts, he was not excused as required. In addition, he did not recuse himself from votes, deliberations, and other actions on the matters before the Council relating to these two companies.

Accordingly, Councilmember Barry acknowledges that his conduct was in violation of the District Code of Conduct, specifically:

1) The Council Code of Conduct, Section III (Gifts from Outside Sources), which states, in pertinent part, that "employees shall not solicit or accept, either directly or indirectly, any gift from a prohibited source"; and

2) The Conflicts of Interest section of the Ethics Act, D.C. Official Code § 1-1162.23(C)(3), which states, in summary, that when an elected official would be required to take action in a matter in which he or she used his or her official position or title in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests, the Council Chairman shall read the statement provided into the record of the proceedings and excuse the elected official from votes, deliberations and other actions on the matter.

Because Mr. Barry accepted gifts from Forney Enterprises, Inc. and F & L Construction, he accepted two gifts from prohibited sources, in violation of the Council Code of Conduct. Because Mr. Barry failed to disclose to the Council Chairman that he accepted these gifts, provide written statements about the nature of his conflicts of interest, and recuse himself from votes, deliberations, and other actions on the matters before the Council relating to these two companies, he violated the Ethics Act.

Councilmember Barry acknowledges that because of these violations he should be and is Censured for his conduct and fined in the amount of \$13,600, which represents twice the total amount of the unlawful gifts he received. Half of this amount will be paid within 14 days, with the balance due in four quarterly installments ending July 11, 2014. The settlement expressly states that funds to satisfy this fine must not come from prohibited sources. Moreover, Councilmember Barry agreed to attend ethics training provided by the Office of Government Ethics within six months.

I recommend that the Ethics Board approve this Negotiated Disposition Agreement because it is a fair and appropriate resolution to this investigation. It acknowledges both Councilmember Barry's acceptance of gifts from two prohibited sources but also recognizes that he disclosed those gifts, as required, on his Public Financial Disclosure Statement. I believe that this Negotiated Disposition is an appropriate resolution to this investigation and urge adoption by the Ethics Board. Thank you.